MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY FINAL EXAMINATION

TRIMESTER 1, 2019/2020

ULV4612 - LAW OF EVIDENCE I

(All Sections / Groups)

22 October 2019
Reading Time: 9.00am-9.15am (15 Minutes)
Answering Time: 9.15am -12.15pm (3 Hours)

INSTRUCTIONS TO STUDENT:

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages and is divided into 2 parts **(Part A and Part B).** There are **2 questions in Part A** and **3 questions in Part B.**

3. Students are required to answer only **1 question in Part A** and **answer ALL 3 questions in Part B**. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall only a CLEAN and ORIGINAL copy of the:
   i. EVIDENCE ACT 1950
   ii. EVIDENCE OF CHILD WITNESS ACT 2007 (Optional); and
   iii. CRIMINAL PROCEDURE CODE
   (Students are not allowed to lend or borrow statute(s) during the Examination. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.)

5. Please write all your answers in the Answer Booklet provided.

PART (A)

Answer only 1 question in Part A. Either Question 1(A) or Question 1(B).

QUESTION 1 (A)

DANGEROUS DRUGS ACT 1952 (REVISED 1980) ACT 234

Section 37A: Application of Presumptions

"Notwithstanding anything under any written law or rule of law, a presumption may be applied under this Part in addition to or in conjunction with any other presumption provided under this Part or any other written law."

Critically evaluate the legality of the above section.

(Total: 25 marks)

QUESTION 1 (B)

William has been charged for committing two separate offences of murder and robbery against his girlfriend, Josephine. Both charges will be jointly tried. In the course of the police investigation, several facts have been revealed as follows:

a. Josephine was found dead at about 9.00 pm on 20 September 2019 in a bush not far from her house. All her valuable belongings including a briefcase containing RM20,000 were also missing. According to a statement given by Sally who was Josephine's clerk, Josephine withdrew the money from a bank earlier that morning for the purpose of paying a deposit to a third party. Sally also informed the police that William visited Josephine in her office that morning. During the visit, William asked Josephine to lend him some money to settle his gambling debts with some "Loan Sharks". Josephine rejected the request and as a result a heated argument took place between the two. Sally in her statement to the police added that she witnessed what happened and heard William saying "We are done and you will regret this, mark my words!"; and

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b. During the police investigation, a fingerprint was also found on the steering wheel of Josephine's car which was parked at the roadside near the bush where her body was found. The fingerprint matched with William's fingerprint. In addition, the police investigation also found evidence of a struggle between Josephine and her attacker. A DNA analysis done on scrapings from Josephine's fingernails also matched with the DNA that belongs to William. It was also revealed that when William was under remand, he refused to give a body sample to the police for the purpose of comparing his DNA with the one found from Josephine's fingernails. His body sample was actually collected from a toothbrush he used during the first day of his remand.

Deputy Public Prosecutor (DPP) Ahmad, a junior DPP who recently graduated has been assigned to conduct the trial. He is seeking your advice whether the above evidence can be admissible during the trial against William.

(Total: 25 marks)

PART (B)

Answer all 3 questions in Part B.

QUESTION 2

Answer BOTH Parts of this question.

Part (a)

Explain why hearsay evidence cannot be admitted in court.

(10 marks)

Part (b)

Explain the differences between the provisions of Section 32 and Section 73A of the Evidence Act 1950.

(15 marks)

(Total: 25 marks)

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QUESTION 3

Gila, a plumber aged 40, has been charged with the murder of Mak Tok, an elderly woman who had hired him to carry out repairs to her home. He is alleged to have committed the offence at No. 129, Jalan SS 22A/2, Damansara Jaya, Petaling Jaya, on 13th June 2019 between 11.00am to 1.00pm. Mak Tok was found tied up and strangled with a piece of cloth. There was no sign of any forced entry into the house. The prosecution alleges that the motive for killing was robbery and that Gila had gained entry to Mak Tok's house on the pretext of doing repairs and had killed her during the robbery.
There are no eye witnesses and the prosecution's evidence is largely circumstantial. Gila denies the murder charge, claims trial and has given an alibi notice that he was with his friend Abu at the time stipulated in the charge.

Apply the law of evidence and advise the trial judge on the following issues:

a. the admissibility of the following statement made by Gila to Inspector Sarkar after his arrest:

> ***"I only stole her gold chain that was in the bathroom I was repairing on 12th June 2019 and I pawned it to get money. I can show you the pawnshop."***

Based on this statement the police recovered the gold chain that belonged to Mak Tok at the pawnshop identified by Gila;

(10 marks)

b. the standard of proof which must be satisfied by the prosecution at the end of trial to secure a conviction based on the type of evidence which has been adduced against Gila; and

(7 ½ marks)

c. who among the parties bears the burden of proof on the issue of alibi and what is the standard of proof required?

(7 ½ marks)

(Total: 25 marks)

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QUESTION 4

Rue, the accused, was charged with trafficking **600.5 grammes** of methamphetamine, an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952. The prosecution's case was that on 1 July 2018 around 11.00 pm Inspector Gadget led a police team to raid a house at No. 64, Taman Batu, Kuala Ketil based on information received. Inspector Gadget had knocked at the front door and identified himself as a police officer. When Rue opened the door, Inspector Gadget immediately placed him under arrest and handcuffed him. On searching one of the rooms, a plastic bag hidden beneath some clothes at the bottom of a cupboard was discovered. Inside the plastic bag, Inspector Gadget found a white substance that was in crystal form, like salt. He believed this substance to be methamphetamine and seized it as evidence. The substance seized was subsequently analysed by Puan Gia, a chemist with the Chemistry Department, who confirmed it to be methamphetamine weighing **125.5 grammes**. Rue has pleaded not guilty to the charge and claims he has no knowledge of the drugs that were found in the room. He claims that he was not the sole occupant of the room in which the drugs were found and has a roommate named Jules. Although a statement was recorded from Jules, he was not called as a witness by the prosecution nor offered as a witness to the defence.

During trial, the prosecution called Inspector Gadget as a witness and he stated as follows, ***"After arresting Rue, I asked if there was anything illegal in the house. Rue nodded his head. I asked him where is it? He nodded his head again and pointed to the room."*** The prosecution had also called Puan Gia who stated, ***"I received the seized substance for chemical analysis on 30 October 2018 from an unidentified officer who instructed me to call Inspector Gadget for the documentation. Based on the analysis I can confirm the substance seized to be methamphetamine weighing only 125.5 grammes".*** Neither Inspector Gadget nor Puan Gia, was able to provide the name of the unidentified officer who had sent the seized substance to the chemistry department for analysis.

Analyse and advise the defence counsel on the following matters:

a. the admissibility of Inspector Gadget's statement in court;

(10 marks)

b. the evidential issues arising from Puan Gia's statement in court; and

(7 ½ marks)

c. the evidential issues arising from the prosecution's failure to call Jules as a witness.

(7 ½ marks)

(Total: 25 marks)

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